

AMENDED IN ASSEMBLY APRIL 17, 2008

AMENDED IN ASSEMBLY APRIL 2, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 2433**

---

**Introduced by Assembly Member Krekorian  
(Coauthors: Assembly Members Lieber and Portantino)**

February 21, 2008

---

An act to amend Sections 1987.1 and 1987.2 of the Code of Civil Procedure, relating to civil discovery.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2433, as amended, Krekorian. Civil discovery: subpoenas.

Existing law accords certain rights and protections to a consumer whose personal records are subject to a subpoena that is directed to a witness with whom the consumer has transacted business or who has acted as agent or fiduciary of the consumer. Existing law also accords certain rights and protections to an employee whose employment records are subject to a subpoena that is directed to his or her employer or a labor organization that has represented the employee. Under existing law, those rights and protections include the power of the court to make an order quashing, modifying, or directing compliance with the subpoena, and to make any other order appropriate to protect the consumer or the employee from unreasonable or oppressive demands. The court may award reasonable expenses incurred in making or opposing the motion for the order, including reasonable attorney's fees, if the court finds the motion was made or opposed in bad faith, without substantial justification, or that any requirement of the subpoena was oppressive.

This bill would authorize the court to make these orders to protect a person whose personally identifying information, as defined, is sought. The court would be authorized under the above provisions to award reasonable expenses incurred in making or opposing the motion for the order, including reasonable attorney's fees, if the court finds the motion was made or opposed in bad faith, without substantial justification, or that any requirement of the subpoena was oppressive. However, the court would be required to award reasonable expenses, including reasonable attorney's fees, incurred in making the motion for an order to quash or modify a subpoena for personally identifying information from a court of this state for use in an action pending in another state, territory, or district of the United States, or in a foreign nation, if the moving party prevails and that subpoena has been served on any Internet service provider, or on the provider of any other interactive computer service.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1987.1 of the Code of Civil Procedure  
2     is amended to read:  
3     1987.1. If a subpoena requires the attendance of a witness or  
4     the production of books, documents or other things before a court,  
5     or at the trial of an issue therein, or at the taking of a deposition,  
6     the court, upon motion reasonably made by the party, the witness,  
7     any consumer described in Section 1985.3, any employee described  
8     in Section 1985.6, or any person whose personally identifying  
9     information, as defined in subdivision (b) of Section 1798.79.8 of  
10    the Civil Code, is sought, or upon the court's own motion after  
11    giving counsel notice and an opportunity to be heard, may make  
12    an order quashing the subpoena entirely, modifying it, or directing  
13    compliance with it upon those terms or conditions as the court  
14    shall declare, including protective orders. In addition, the court  
15    may make any other order as may be appropriate to protect the  
16    parties, the witness, the consumer, the employee, or the person  
17    from unreasonable or oppressive demands, including unreasonable  
18    violations of the right of privacy of the witness, consumer,  
19    employee, or person. Nothing herein shall require any person to  
20    move to quash, modify, or condition any subpoena duces tecum

1 of personal records of any consumer served under paragraph (1)  
2 of subdivision (b) of Section 1985.3 or employment records of  
3 any employee served under paragraph (1) of subdivision (b) of  
4 Section 1985.6.

5 SEC. 2. Section 1987.2 of the Code of Civil Procedure is  
6 amended to read:

7 1987.2. (a) Except as specified in subdivision (b), in making  
8 an order pursuant to motion made under subdivision (c) of Section  
9 1987 or under Section 1987.1, the court may in its discretion award  
10 the amount of the reasonable expenses incurred in making or  
11 opposing the motion, including reasonable attorney's fees, if the  
12 court finds the motion was made or opposed in bad faith or without  
13 substantial justification or that one or more of the requirements of  
14 the subpoena was oppressive.

15 (b) If a motion is filed under Section 1987.1 for an order to  
16 quash or modify a subpoena *from a court of this state* for personally  
17 identifying information, as defined in subdivision (b) of Section  
18 1798.79.8 of the Civil Code, ~~from a court of this state~~ for use in  
19 an action pending in another state, territory, or district of the United  
20 States, or in a foreign nation, and that subpoena has been served  
21 on any Internet service provider, or on the provider of any other  
22 interactive computer service, as defined in Section 230(f)(2) of  
23 Title 47 of the United States Code, if the moving party prevails,  
24 the court ~~also~~ shall award the amount of the reasonable expenses  
25 incurred in making the motion, including reasonable attorney's  
26 fees. ~~This subdivision shall govern requests for expenses for~~  
27 ~~motions described in this subdivision.~~